

Application No. 10/088 852
Amendment Dated 27th June 2005
Reply to Office Action of 28th November 2005

Remarks/Arguments:

The Amendment enclosed herein is based on the Office communication dated June 27th, 2005. The time period for response is being extended by two months by the petition included herein (note November 27th 2005 was a Sunday).

Applicants have amended the specification to provide the priority claim.

Claims 1-12 and 14-22 constitute the pending claims in the present application. Claims 1-12, 14-17 and 19-22 stand rejected, claim 18 is objected to.

In response to the communication claims 2-6 and 9 have been canceled. Claims 1, 7, 8, 10, 12 and 14-22 have been amended. Claims 23-25 have been added.

Applicants respectfully request reconsideration in view of the following remarks.

Detailed Action

Applicants note that the Examiner states the amended claims have overcome the previous rejection of 112 1st paragraph and that therefore said rejection is withdrawn.

However, Examiner states that Applicant's argument has not overcome the 112/2nd rejection for claim 2. As stated above, claim 2 has been cancelled - Applicants believe this rejection is thus moot.

The previous objections were also withdrawn for claims 1-12, 14-17 and 19-22, by the Examiner but not for claim 18. Applicants have amended claim 18 herein to incorporate the definitions of the various groups from claim 6. Claim 18 no longer refers to claim 6. Applicants thus believe that they have overcome the objection to claim 18.

The Examiner also states that in light of Applicant's argument on the antecedent basis for the phrase "combination thereof" in claim 2, it has been found that the scope of "optionally substituted hydrocarbyl" has indefinite metes and bounds. However, as stated above, Applicants have cancelled claim 2 thus rendering this moot.

Applicants note due to the following new ground of rejection and objection, the previous finality is withdrawn.

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Claim Rejections - 35 USC § 112

1. Claims 1-12, 14-17, and 19-22 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

a. Claims 1 and 2 recite the limitation of "optionally substituted hydrocarbyl", which the Examiner states has indefinite metes and bounds.

The term "optionally substituted hydrocarbyl" in claim 1 first appears in the definition of R⁵. To overcome the Examiner's objection, Applicants have specified in R⁵ that optional substituents are functional groups (basis for this amendment is to be found at page 16 line 3 to 4 of the application as originally filed). Applicants have also included a definition of the optional substituents for "optionally substituted heterocyclic groups" (basis for this amendment is to be found at page 16 lines 4 to 6). Applicants have also added a definition of "functional groups" and "hydrocarbyl" (which also appears in the definition of R⁵) at the end of claim 1. Basis for these amendments are to be found using the definitions provided at page 5 line 16 to 30 (for functional groups) and page 5 line 6 to 14 (for hydrocarbyl). In addition Applicants have also incorporated the subject matter of page 4 line 18 to 24 to ensure that the number of carbon atoms is clearly defined.

The definition of R¹⁶ has been replaced with the subject matter of claim 6 removing the term "optionally substituted hydrocarbyl" from the definitions of R¹-R⁴. Claim 6 has consequently been cancelled.

Applicants believe they have overcome this rejection.

b. The Examiner states that claims 5 and 6 lack antecedent basis because they depend on claim 1, but the definition of R¹⁶ includes twenty-two groups that are not within the scope of "optionally substituted hydrocarbyl" (as defined on page 5 of the specification). Claims 10, 11 and 16-22 are rejected as being dependent on claim 6.

Applicants have cancelled claims 5 and 6 rendering this rejection moot. Claim 10 has been amended to depend on claim 1. Claims 11 and 16 depend on claim 10 and 17-22 on claim 16 and thus are amended by the amendment to claim 10.

Applicants believe they have overcome this rejection.

c. The Examiner states that claims 1 and 7 recite the limitation of "ester or amide thereof" however, many of the substituents are already an ester or amide (e.g., moieties defined for R'-R

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4), thus it is unclear if another ester or amide is intended. The Examiner goes on to state it is also unclear where the additional ester or amide is.

Applicants have replaced the phrase "ester or amide thereof" with "or phosphate ester thereof" and included language towards the end of claim 1 to make clear what is intended by a phosphate ester. This language has been taken from page 18 line 10 to 15. This replacement has been made in claims 1, 7, 14, 15 and 16 and the new phrase added to claims 8, 10 and 17 to 22.

Applicants believe they have overcome this rejection.

d. Claims 3-6, 8, 9, 12, 14 and 15 are rejected as being dependent on claim 1 or 7.

The subject matter of claim 6 has been incorporated into claim 1. Claims 2 to 6 have been cancelled. Claim 9 has also been cancelled. In view of these cancellations and because the rejection of claims 1 and 7 have been addressed in paragraphs 1a and 1c above, Applicants request that rejection 1d is also withdrawn.

Claim Objections

2. Claim 18 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must refer to preceding claims in an alternative language (claim 18 refers to both claims 6 and 16).

Applicants have incorporated the definitions of groups (1), (3), (6) and (10) from claim 1 into claim 18 so that the reference to claim 6 is no longer required. This claim now refers only to claim 16.

Applicants request that this objection is withdrawn.

Specification

3. The disclosure was objected to because on page 6, line 3, there were two commas after the word hereroaryloxy.

Applicants have made the appropriate correction above.

References cited on PTO-892

Applicants agree that WO2004/013091 is not competent prior art against this application.

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New Claims and Other Claim Amendments

In addition to the above Applicants have made certain other amendments. In particular claim 7 has been made dependent on claim 1 and parts of it have been deleted to avoid repetition. Various typographical errors have also been corrected.

Applicants have also added new claims 23 to 25. These claims find basis in the description as follows:

- claim 23 – page 17 line 32
- claim 24 – page 16 line 1
- claim 25 – page 18 lines 1 to 2

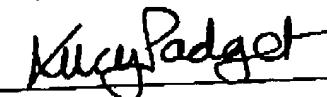
The above amendments have been made without prejudice to Applicants right to prosecute any cancelled subject matter in a timely filed continuation application.

Applicants believe the application is in condition for allowance, which action is respectfully requested

A petition for a 2 month extension of time is being filed herewith, the Commissioner is hereby authorized to charge any deficiency in the fees or credit any overpayment to deposit account No. 50-3231, referencing Attorney Docket No. Z70600-1P US.

Although Applicants believe no excess claim fees are due, the Commissioner is hereby authorized to charge any deficiency in the fees or credit any overpayment to deposit account No. 50-3231, referencing Attorney Docket No. Z70600-1P US.

Respectfully submitted,



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Enclosures: Transmittal Form
Fee Transmittal Form
Petition for extension of time (2 months)

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